

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

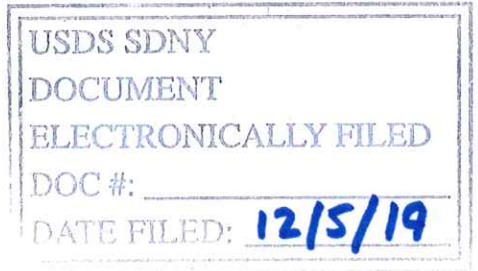
UNITED STATES OF AMERICA

-v-

WILFREDO SEPULVEDA,

Defendant.

No. 18-cr-363 (RJS)
ORDER



RICHARD J. SULLIVAN, Circuit Judge:

For the reasons stated on the record at the sentencing held on February 25, 2019, IT IS HEREBY ORDERED THAT the government's motion for reconsideration (Doc. No. 108) of the Court's November 5, 2019 Opinion and Order (Doc. No. 103) is denied.

With respect to Defendant's December 4, 2019 request (Doc. No. 112) to "resentence [him] to a sentence at or below the corrected Guidelines range" stated in the Court's November 27, 2019 Order (Doc. No. 111), the Court rejects, for the reasons stated in that Order and at sentencing, Defendant's conclusory argument that his sentence is now particularly "excessive under the circumstances and does not comport with the parsimony clause of 18 U.S.C. § 3553(a)" (Doc. No. 112). As for Defendant's argument that the Court erroneously relied on "allegations" that he brandished a gun to threaten an 83-year-old woman and a good Samaritan neighbor (Doc. No. 112), the Court notes that Defendant merely repeats the same argument he raised when objecting to the inclusion of these facts in the presentence report (Doc. No. 96 at 19). In any event, because there was clearly sufficient evidence at trial to establish these facts by a preponderance of the evidence, the Court was entitled to rely on them at sentencing notwithstanding Defendant's acquittal on Count Four. *See United States v. Watts*, 519 U.S. 148,

156 (1997); *United States v. Pica*, 692 F.3d 79, 88 (2d Cir. 2012). Accordingly, IT IS FURTHER ORDERED THAT Defendant's request for resentencing is denied.

With respect to Defendant's November 26, 2019 letter requesting the appointment of CJA counsel on appeal (Doc. No. 110), IT IS FURTHER ORDERED THAT Michael Tremonte is appointed as CJA counsel for that purpose and thus shall file a notice of appearance.

IT IS FURTHER ORDERED THAT the government shall, no later than December 27, 2019, submit a letter apprising the Court as to whether it intends to seek restitution in this case, and if so, the appropriate amount of restitution. Defendant's response, if any, is due on January 11, 2020.

The Clerk of Court is respectfully directed to terminate the motions pending at document numbers 110 and 112.

SO ORDERED.

Dated: December 5, 2019
New York, New York



RICHARD J. SULLIVAN
UNITED STATES CIRCUIT JUDGE
Sitting by Designation